

Is MySpace a Good Kids' Space? A Look at the Implications of the January 2008 MySpace – Attorneys General Agreement Concerning Online Age Verification

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Abstract: In January of 2008, the popular social-networking website MySpace made an agreement with the Attorneys General of forty-nine states. This agreement followed pressure for MySpace to address the issue of sexual predators engaging minor users of MySpace. In the agreement, MySpace agreed to, among other things, investigate the possible implementation of age verification. Age verification would involve MySpace creating an e-mail registry that contained the e-mail addresses of minors. These addresses would be sent in by parents who did not want their children to have MySpace accounts. The age verification solution has its proponents and its critics. Proponents hail it as a way to make children safer online. Critics feel age verification would not sufficiently protect children and also worry about the ramifications of keeping information about minors in a potentially breachable database. Some of those who feel that age verification will prove an inadequate solution to the problem of children's online safety advocate educating families about the Internet and promoting industry self-regulation. These implementations would achieve the goals that age verification advocates desire without the pitfalls that accompany age verification.

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I. INTRODUCTION

Social-networking websites (“SNs”) are a rapidly growing area of the Internet, especially for Gen Y’ers.¹ SNs help individuals build online social networks that consist of communities of people with any number of similarities or dissimilarities. They allow users to connect with friends in specific categories, such as former classmates. In North America, the two most popular SNs are MySpace and its chief rival, Facebook.²

Parents and many policymakers are concerned about the safety of minors on SNs. These concerns have already resulted in the implementation of many precautions to keep young children safe from possible dangers on MySpace, including the dangers posed by sexual predators. For example, individuals must be at least a specific age to register an account on MySpace.³ In addition, profiles for individuals under sixteen years old are automatically set to “private,” meaning their profiles are restricted to those who the user specifically added as

¹ Bill Tancer, *Facebook: More Popular Than Porn*, TIME, Oct. 31, 2007, <http://www.time.com/time/business/article/0,8599,1678586,00.html> (stating that social networking websites are the most popular websites for eighteen to twenty-four year-olds, with search engines, web-based e-mail, and pornographic websites coming in second, third, and fourth, respectively); see also Adam Thierer, *The MySpace Middleman Isn't the Problem*, INFO TECH & TELECOM NEWS, Aug. 1, 2006, <http://www.heartland.org/Article.cfm?artId=19436> (“Social networking Web sites, especially the phenomenally successful MySpace.com, represent the fastest-growing portion of online traffic today. MySpace alone signs up an estimated 250,000 new users daily and has more than 76 million subscribers, making it one of the 10 biggest sites in the world. MySpace.com and hundreds of other sites, such as LiveJournal, Friendster, and Facebook, allow users to network with friends, build ‘buddy lists,’ and share stories and pictures. These sites are the equivalent of digital town squares, where citizens gather, share culture, and build new friendships. . . . Eighty percent of MySpace users are over the age of 18. . .”).

² See Amit Agarwal, *Popular Social Networking Websites Around the World*, DIGITAL INSPIRATION, Feb. 25, 2008, <http://www.labnol.org/internet/favorites/popular-social-networking-websites-around-the-world/2377>.

³ There is a discrepancy as to whether the minimum age to join MySpace is thirteen or fourteen. MySpace.com Terms of Use Agreement (Feb. 28, 2008), <http://www.myspace.com/Modules/Common/Pages/TermsConditions.aspx> (minimum age is fourteen); JOINT STATEMENT ON KEY PRINCIPLES OF SOCIAL NETWORKING SITES SAFETY 1 (Jan. 14, 2008), http://www.mass.gov/Cago/docs/press/2008_01_14_myspace_agreement_attachment1.pdf [hereinafter JOINT STATEMENT] (minimum age is fourteen).

a “friend.”⁴ Older users have the option of allowing “non-friends” to access their profile pages.⁵ Finally, if MySpace discovers that a user is actually younger than thirteen years old, that user’s account will be deleted.⁶

Despite these precautions, MySpace receives criticism from, among others, law enforcement and the news media alleging that the age restrictions MySpace implements are easily avoidable and that the website is frequented by online predators.⁷ These criticisms are substantiated by several instances in which predators have gained access to minors through MySpace. For example, in June 2006, Katherine Lester, a sixteen year-old American girl, flew to Tel Aviv, Israel after tricking her parents into getting her a passport; she planned to meet with an older man she had met through MySpace.⁸ This situation illustrates how easy it is for adults around the world to gain access to minors via SNs. Even more troubling, in July of 2007, MySpace located and deleted the profiles of 29,000 convicted sex offenders from its website after it was sued by the families of several teenage girls who were sexually assaulted by MySpace members.⁹

These instances eventually led to an agreement between MySpace and Attorneys General from forty-nine U.S. states.¹⁰ The purpose of

⁴ JOINT STATEMENT, *supra* note 3, at app. A1.

⁵ MySpace.com Frequently Asked Questions, How do I Report Underage Users?, <http://www.myspace.com/Modules/Help/Pages/HelpCenter.aspx?Category=3&Question=29> (last visited March 10, 2009).

⁶ MySpace.com Terms of Use Agreement, *supra* note 3.

⁷ See generally Pete Williams, *MySpace, Facebook Attract Online Predators*, MSNBC.COM, Feb. 3, 2006, <http://www.msnbc.msn.com/id/11165576> (reporting growing concern over online predators’ use of MySpace and Facebook).

⁸ *‘MySpace’ Teen Returns From Middle East*, FOXNEWS.COM, June 10, 2006, <http://www.foxnews.com/story/0,2933,198981,00.html>. Ms. Lester eventually returned to the United States.

⁹ *MySpace Deletes 29,000 Sex Offenders*, REUTERS, July 24, 2007, <http://www.reuters.com/article/domesticNews/idUSN2424879820070724?feedType=RS&rpc=22&sp=true>.

¹⁰ See generally JOINT STATEMENT, *supra* note 3, at 1. The only state Attorney General who did not support the agreement was Greg Abbott of Texas, who “didn’t consider the proposed safety measure to be strong enough.” Caroline McCarthy, *MySpace Agrees to Social-Networking Safety Plan*, CNET NEWS, Jan. 14, 2008, http://news.cnet.com/8301-13577_3-9849909-36.html.

the agreement was to protect minors on the Internet. Although the Attorneys General pushed to mandate an e-mail address registry for the purpose of age verification, the agreement stopped short of such a measure.¹¹ However, MySpace promised to explore the implementation of such an option.¹² An e-mail registry would act as an age verification tool, theoretically preventing children whose parents submit their e-mail addresses from opening a MySpace account. Despite the utility of such a registry, it could raise major privacy issues, and the same ends might be achievable through different means, such as parent and child online safety education.

This note will describe the January 2008 agreement between MySpace and the Attorneys General, explore the problem of sexual predators on SNs, detail past legislative attempts to make the Internet safer for minors, and relate the positions on both sides of the age verification debate. Finally, the note will conclude with a recommendation on what some experts believe is the most effective way to combat the problem: a combination of parental involvement and private regulation.

II. THE JANUARY 2008 MYSPACE AGREEMENT

In New York City, on January 14, 2008, representatives from MySpace came to an agreement with Attorneys General from forty-nine states; the two groups “unveil[ed] an extensive new plan for ensuring the safety of minors on the Internet.”¹³ The plan was referred to as a “Joint Statement on Key Principles of Social Networking Safety.”¹⁴ This followed the efforts of eight states’

¹¹ See generally JOINT STATEMENT, *supra* note 3. According to the agreement, MySpace will review every image and video uploaded to the site, make the profiles of fourteen to seventeen year-old users automatically private, protect minors from being contacted by adults they do not already know in the physical world, delete sex offenders from the website, explore the establishment of a children’s e-mail registry, increase its communications with consumers who report a complaint about inappropriate content or activity on the site, cooperate with law enforcement officials, organize an industry-wide Internet Safety Task Force to develop online safety tools, including a review of identity authentication tools, implement “age locking” for existing profiles, and engage in other activities designed to protect the safety of its minor users. *Id.*

¹² *Id.* at 3.

¹³ McCarthy, *supra* note 10.

¹⁴ See JOINT STATEMENT, *supra* note 3, at 1.

Attorneys General in the spring of 2007 to bring MySpace into the fight against sex offenders on the Internet.¹⁵

The 2008 agreement stipulated that MySpace would work with the Attorneys General in an effort to combat abuses of the website—including pornography, harassment, cyberbullying, and identity theft—and also to work with parents and schools to promote education about online threats existing on MySpace.¹⁶ The most controversial part of the agreement is that MySpace agreed to consider developing “new technology for age and identity verification on social-networking sites.”¹⁷ “The site . . . pledged to consider working with a third-party service that would maintain a registry of minors’ e-mail addresses, allowing parents to add their childrens’ [sic] names to the list and prevent them from creating a profile.”¹⁸ The age verification registry would, theoretically, give parents the ability to control whether or not their children would be able to set up an account on MySpace.

Given that mandatory age verification on SNs is a controversial topic, one can sympathize with MySpace’s hesitation to agree to mandate age verification tactics.¹⁹ As discussed further below, opponents of age verification argue that such implementations would be ineffective, would put sensitive data in vulnerable storage systems,

¹⁵ McCarthy, *supra* note 10. In the spring of 2007, eight states’ Attorneys General wrote an open letter to MySpace expressing concern about the numbers of registered sex offenders with profiles on MySpace. This caused MySpace to eventually unveil a preliminary plan for compliance. *Id.* See also Posting of Timothy P. Tobin to the Privacy Law Blog, <http://privacylaw.proskauer.com/2007/10/articles/childrens-online-privacy-prote/social-networking-sites-feel-the-heat-from-law-enforcement> (Oct. 17, 2007).

¹⁶ McCarthy, *supra* note 10.

¹⁷ *Id.*

¹⁸ Andy Greenberg, *MySpace’s Shaky Safety Balance*, FORBES.COM, Jan. 14, 2008, http://www.forbes.com/2008/01/14/myspace-porn-children-tech-security-cx_ag_0114myspace.html.

¹⁹ See generally Posting of Sean Garret to The 463: Inside Tech Policy, http://463.blogs.com/the_463/2008/01/3qs-with-adam-t.html (Jan. 14, 2008, 12:08 EST) (“The agreement with the AGs is especially notable for what it does not include: age verification mandates. The call for an Internet Safety Technical Task Force to study online safety methods and identity authentication tools is a sensible alternative to the rush to mandate age verification, which some AGs have been advocating vociferously over the past two years.”).

and would be costly.²⁰ Advocates of age verification emphasize the potential value of age verification to alleviate some of the risks children face online, such as predation.²¹ SNs are stuck in the middle of a debate with strong feelings on both sides and that may have no clear right answer.

In the January agreement, MySpace also pledged to “include online protections and participate in a working group to develop age-verification and other technologies.”²² MySpace also agreed to accept independent monitoring and to change its website’s structure.²³ After the agreement was executed, MySpace Chief Security Officer Hemanshu Nigam said: “We thank the Attorneys General for a thoughtful and constructive conversation on Internet safety. This is an industry-wide challenge, and we must all work together to create a safer Internet.”²⁴

Nonetheless, the measures that MySpace *did* agree to implement are intended to keep minors safe on the website. For example, MySpace will automatically set the profiles of sixteen year-olds to private.²⁵ More importantly, MySpace is going to lead an industry-wide Internet Safety Technical Task Force whose goal is “to study online safety tools, including a review of online identity authentication technology,” which one day could be used to develop an age and identity verification mechanism for SNs like MySpace.²⁶

²⁰ See e.g., Posting of Anne Collier to NetFamilyNews.org: Kid-Tech News for Parents, http://www.netfamilynews.org/2008_06_29_archive.html (July 1, 2008, 09:30 EST); Adam Thierer, *USA Today*, *Age Verification, and the Death of Online Anonymity*, THE TECH. LIBERATION FRONT, Jan. 23, 2008, <http://techliberation.com/2008/01/23/usa-today-age-verification-and-the-death-of-online-anonymity>.

²¹ See Emily Steel & Julia Angwin, *MySpace Receives More Pressure to Limit Children’s Access to Site*, WALL ST. J., June 23, 2006, at B.3, available at http://online.wsj.com/public/article/SB115102268445288250-YRxtorTsyf1QiQf2EPBYSf7iU_20070624.html?mod=tff_main_tff_top.

²² *States Reach Agreement to Make MySpace Safer*, WCBS NEWSRADIO 880, Jan. 14, 2008, <http://www.wcbs880.com/pages/1474987.php>.

²³ *Id.*

²⁴ *Id.* According to Nigam, the industry should adopt measures included in the agreement “to provide a safer online experience for teens and we look forward to sharing our ongoing safety innovations with other companies.” *Id.*

²⁵ JOINT STATEMENT, *supra* note 3, at app. A1.

²⁶ Posting of Adam Thierer to The Progress and Freedom Foundation Blog, http://blog.pff.org/archives/2008/01/todays_myspacea.html (Jan. 14, 2008, 21:41 EST)

Promising to explore the option of age verification is less extreme than outright mandatory age verification and may help calm age verification critics by providing for a more informed decision.²⁷ The Task Force aims to attain the cooperation of other social-networking websites, most notably Facebook.²⁸ It should be mentioned that Facebook is known for its more privacy-oriented “architecture” and has always encouraged its users to use their real identities.²⁹

Some online child protection experts applauded the agreement between MySpace and the Attorneys General. Adam Thierer, author of *Parental Controls and Online Child Protection: A Survey of Tools and Methods*³⁰ and senior fellow at the Progress and Freedom Foundation (“PFF”), called the agreement “a sensible step forward in terms of online safety.”³¹ Thierer believes that the agreement may hold the potential to develop a code of conduct for SNs, as well as keep children safe online and avoid governmental overregulation of SNs.³²

Thierer fears, however, the agreement could lead to overregulation, as Attorneys General Roy Cooper of North Carolina and Richard Blumenthal of Connecticut implied that the goal of the task force “would be to develop and implement a full-blown age verification system for the Internet.”³³ Thierer fears that overzealous Attorneys General might lead to “federal Internet meddling and silly bills like the Deleting Online Predators Act (“DOPA”) that are completely counter-productive” because many Attorneys General

(“The Task Force will include Internet businesses, identity authentication experts, non-profit organizations, academics and technology companies.”).

²⁷ See generally Leslie Harris, *MySpace: Coming of Age for Coming of Age*, ABC NEWS, Feb. 28, 2008, <http://abcnews.go.com/Technology/story?id=4355851>.

²⁸ McCarthy, *supra* note 10.

²⁹ Brad Stone, *MySpace to Let Parents Block Their Children from Joining*, N.Y. TIMES, Jan. 14, 2008, <http://bits.blogs.nytimes.com/2008/01/14/myspace-to-let-parents-block-their-kids-from-joining>.

³⁰ ADAM THIERER, PARENTAL CONTROLS AND ONLINE CHILD PROTECTION: A SURVEY OF TOOLS AND METHODS 1 (The Progress & Freedom Foundation 2007), available at <http://www.pff.org/parentalcontrols>.

³¹ Posting of Sean Garret, *supra* note 19 (Q & A session with Mr. Thierer).

³² *Id.*

³³ *Id.* Attorney General Cooper is quoted as saying: “We are going to find and develop online identity authentication tools.”

seem to have already concluded that age verification—and not education (which Thierer advocates)—is the ultimate solution.³⁴ Thierer also notes some critics have reservations about a possible registry of minors' e-mail addresses submitted by parents who do not want their children to register on SNs like MySpace.³⁵ He is concerned about who would be in control of such a registry and whether the list would be “vulnerable to falling into the hands of spammers or marketers.”³⁶

At this point, the argument becomes whether age verification, which would require some form of collecting large amounts of personal information in a potentially vulnerable location, is a viable option, or whether it is not worth the risk of collecting minors' sensitive information. Some critics argue that requiring the disclosure of personal information to gain admittance to age verified sites poses a risk that outweighs the problem age verification is meant to remedy: online predation.³⁷

III. THE PROBLEM: SEXUAL PREDATORS ON SOCIAL NETWORKING WEBSITES

The privacy concerns of a registry containing identifying information are often juxtaposed with the threat posed by sexual predators preying on children through MySpace or other SNs.³⁸ As noted above, in 2007, MySpace removed the profiles of 29,000 convicted sex offenders from its website after Connecticut Attorney General Richard Blumenthal served the company with a subpoena

³⁴ *Id.* DOPA is discussed further *infra* Part III.A.

³⁵ Posting of Adam Thierer, *supra* note 26.

³⁶ *Id.* See also Chloe Albanesius, *MySpace, Attorneys General Target Online Predators*, PCMAG.COM, Jan. 14, 2008, <http://www.pcmag.com/article2/0,2704,2248924,00.asp> (noting that a registry of children's e-mail addresses intended to help parents control their children's access to the Internet was accidentally released to the public in Utah).

³⁷ See Harris, *supra* note 27.

³⁸ See Adam Thierer, *Second Life to Adopt Age Verification*, THE TECH. LIBERATION FRONT, May 9, 2007, <http://techliberation.com/2007/05/09/second-life-to-adopt-age-verification>. Second Life, an internet social networking site, decided to implement an age verification system that required users to provide “a few simple details” about their identity— their name, birthday, address, last four digits of their social security number, and for non-residents, a passport or national ID number. *Id.*

demanding MySpace turn over the users' records.³⁹ The problem is not limited to MySpace— some sources report that one in five children receive a sexual solicitation or approach online every year and one in thirty-three children online receive an “aggressive sexual solicitation,” such as a request to meet, a telephone call, mail, or a gift.⁴⁰ Statistics like these instigate fear in age verification advocates.⁴¹ However, some contend the problem of Internet predation is not as prevalent as age verification advocates assert.⁴²

A. ATTEMPTS BY CONGRESS TO SOLVE THE PROBLEM: COPPA, COPA AND DOPA

The issue of children's online safety had arisen many times prior to the January 2008 Agreement, and Congress has made several attempts to deal with the problem. These attempts have met with mixed levels of success. The Children's Online Privacy Protection Act (“COPPA”) is one attempt by Congress to protect children under thirteen on the Internet.⁴³ COPPA's goal is to protect children's private information.⁴⁴ While not expressly concerned with online

³⁹ *MySpace Deletes 29,000 Sex Offenders*, *supra* note 9. See also Greenberg, *supra* note 18. After this, Blumenthal, turned his investigators on Facebook in July of 2007, announcing that “he had found ‘three or more’ sex offenders on the site, and demanding stronger safeguards. When New York Attorney General Andrew Cuomo began threatening legal action against Facebook in September, the site agreed to revamp its safety responses, addressing complaints of obscene or abusive content within 24 hours.” *Id.*

⁴⁰ Yello Dyno, Child Predators on the Internet Statistics, http://www.yellodyno.com/html/Child_predators_on_the_Internet_stats.html (last visited Jan. 31, 2009). Only 25% of these solicited children told a parent. *Id.*

⁴¹ See generally Harris, *supra* note 27; Press Release, Washington State Office of the Attorney General, Attorney General McKenna Announces Nationwide Agreement with MySpace to Protect Kids Online (Jan. 14, 2008), *available at* <http://www.atg.wa.gov/pressrelease.aspx?id=18786>. According to Washington Attorney General Rob McKenna, “Every day, around 50,000 sex offenders are on the Internet, lurking in chat rooms and on sites where kids and teens congregate.” *Id.*

⁴² Harris, *supra* note 27.

⁴³ Children's Online Privacy Protection Act, 15 U.S.C. §§ 6501–6506 (2000), *available at* <http://uscode.house.gov/pdf/2005/2005usc15.pdf> at 1670-75.

⁴⁴ FED. TRADE COMM'N, HOW TO COMPLY WITH THE CHILDREN'S ONLINE PRIVACY PROTECTION RULE (Dec. 2006), <http://www.ftc.gov/bcp/edu/pubs/business/idtheft/bus45.pdf>.

child predation, COPPA is intended to protect children online by guarding against the potential misuse of personal information collected from children by commercial websites.⁴⁵ It was enacted “in response to a growing awareness of Internet marketing techniques that targeted children and collected their personal information from websites without any parental notification.”⁴⁶

COPPA mandates what a website must include in its privacy policy, when and how to obtain parental consent, and the responsibilities website operators have concerning the private information of “children,” defined as individuals less than thirteen years of age.⁴⁷ COPPA also provides an avenue for industry self-regulation—its safe harbor provision allows self-regulating organizations to request Federal Trade Commission (“FTC”) approval of self-regulatory guidelines governing members’ compliance with COPPA.⁴⁸ Membership in an approved self-regulation program would subject that member to its own program’s disciplinary procedures, rather than FTC enforcement.⁴⁹ All this is designed to protect children’s private information. For instance, COPPA provided the FTC the authority to bring a number of suits against websites for COPPA violations.⁵⁰ Although COPPA has met with success, advocates of further action to protect minors online, such as the advocates of the January 2008 Agreement, believe more can be done.

⁴⁵ See generally, 15 U.S.C. §§ 6501–6506.

⁴⁶ Elect. Privacy Info. Ctr., The Children’s Online Privacy Protection Act (COPPA), <http://epic.org/privacy/kids/> (last visited Jan. 30, 2009).

⁴⁷ 15 U.S.C. §§ 6501–6506.

⁴⁸ *Id.* at § 6503.

⁴⁹ *Id.*

⁵⁰ See Press Release, Fed. Trade Comm’n, FTC Announces Settlements with Web Sites that Collected Children’s Personal Data Without Parental Permission (Apr. 19, 2001), available at <http://www.ftc.gov/opa/2001/04/girlslife.shtm>; Press Release, Fed. Trade Comm’n, Popcorn Company Settles FTC Privacy Violation Charges (Feb. 14, 2002), available at <http://www.ftc.gov/opa/2002/02/popcorn.shtm>; Press Release, Fed. Trade Comm’n, Web Site Targeting Girls Settles FTC Privacy Charges (Oct. 2, 2001), available at <http://www.ftc.gov/opa/2001/10/lisafrank.shtm>; Press Release, Fed. Trade Comm’n, FTC Receives Largest COPPA Civil Penalties to Date in Settlements with Mrs. Fields Cookies and Hershey Foods (Feb. 27, 2003), available at <http://www.ftc.gov/opa/2003/02/hersheyfield.shtm>; Bob Sullivan, *FTC Fines Xanga for Violating Kids’ Privacy*, MSNBC.COM, Sept. 7, 2006, <http://www.msnbc.msn.com/id/14718350>.

Compared with the arguable successes of COPPA, the Child Online Protection Act ("COPA"),⁵¹ another attempt to protect minors from the potential dangers online, met with failure. The Act was proposed in response to the proliferation of available pornographic content on the Internet in the late 1990s.⁵² COPA's purpose was to protect minors from harmful material, such as obscene images, found on the Internet.⁵³ COPA required commercial distributors of "material harmful to minors" to restrict their sites from minors' access.⁵⁴

Unfortunately, COPA met with problems of enforceability. The Supreme Court upheld an injunction on COPA enforcement in *Ashcroft v. ACLU*.⁵⁵ The Court held that COPA was likely unconstitutional,⁵⁶ noting that there were other constitutional methods of protecting children from harmful materials on the Internet, which could be used in COPA's stead.⁵⁷ In addition, the Court noted two less restrictive laws had been passed since COPA was enacted; given Internet development, these measures might better protect minors from the harmful material that was COPA's concern.⁵⁸ *Ashcroft* was sent back to the district court for trial, where Judge

⁵¹ Child Online Protection Act, 47 U.S.C. § 231 (2000).

⁵² H.R. Rep. No. 105-775, at 7-11 (1998), *available at* http://epic.org/free_speech/censorship/hr3783-report.html.

⁵³ 47 U.S.C. § 231(e)(6)(A)-(C) ("The term 'material that is harmful to minors' means any communication, picture, image, graphic image file, article, recording, writing, or other matter of any kind that is obscene . . ."). The statute goes on to provide that the definition also includes material that appeals to prurient interests (using a contemporary community standard) and "depicts, describes, or represents, in a manner patently offensive with respect to minors, an actual or simulated sexual act or sexual contact, an actual or simulated normal or perverted sexual act, or a lewd exhibition of the genitals or post-pubescent female breast" and "taken as a whole, lacks serious literary, artistic, political, or scientific value for minors." *Id.*

⁵⁴ 47 U.S.C. § 231.

⁵⁵ *Ashcroft v. ACLU*, 542 U.S. 656 (2004).

⁵⁶ *Id.* at 660 (noting that COPA was likely to violate the First Amendment).

⁵⁷ *Id.* at 665 ("Filtering's [(one alternative to COPA)] superiority to COPA is confirmed by the explicit findings of the Commission on Child Online Protection, which Congress created to evaluate the relative merits of different means of restricting minors' ability to gain access to harmful materials on the Internet.").

⁵⁸ *Id.* at 672. One alternative prohibits misleading domain names and the other creates a child-safe dot kids domain. 18 U.S.C. § 2252B (2000); 47 U.S.C. § 941 (2000).

Lowell A. Reed, Jr. struck down COPA because it violated both the First and Fifth Amendments of the U.S. Constitution.⁵⁹ In terms of protecting minors from harmful content on the Internet, COPA can fairly be considered a failure.⁶⁰

Another attempt by Congress to protect minors from online dangers has yet to become law. Introduced by Representative Michael Fitzpatrick (R-Pa), H.R. 5319, the Deleting Online Predators Act of 2006 ("DOPA 2006"),⁶¹ attempted to deal with the problem of online predators.⁶² DOPA 2006 would have functioned by "require[ing] schools and libraries that receive federal funding to block minors' access to social networking sites, like MySpace.com. . . ."⁶³ Its goal

⁵⁹ *ACLU v. Gonzalez*, 478 F. Supp. 2d 775, 777 (E.D. Pa. 2007).

⁶⁰ *See* *ACLU v. Mukasey*, 534 F.3d 181, 184 (3d Cir. 2008); *ACLU v. Ashcroft*, 322 F.3d 240, 243 (3d Cir. 2003) (recognizing the unconstitutionality of COPA).

⁶¹ Deleting Online Predators Act of 2006, H.R. 5319, 109th Cong. (2006), *available at* http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_bills&docid=f:h5319ih.txt.pdf.

⁶² *See id.* This bill was introduced in the House of Representatives by Representative Michael Fitzpatrick (R-PA) on May 9, 2006. *Id.* DOPA was brought up for debate and an immediate vote in the House on July 26, 2006. Library of Congress, Thomas.gov, <http://www.thomas.gov/cgi-bin/bdquery/z?d109:HR05319:@@L&summ2=m&> (last visited Jan. 30, 2009). The bill met with criticism for being hastily rewritten before its vote and not getting the markup of a full House Committee. Declan McCullagh, *Chat Rooms Could Face Expulsion*, CNET NEWS, July 27, 2006, http://www.news.com/2100-1028_3-6099414.html?part=rss&tag=6099414&subj=news. The bill passed as amended in the House by a vote of 410–15 (seven abstentions). Office of the Clerk, U.S. House of Representatives, Final Vote Results for Roll Call 405, <http://clerk.house.gov/evs/2006/roll405.xml> (last visited Jan. 1, 2009). The bill was not voted on by the Senate, but on January 4, 2007, Senator Ted Stevens (R-AK) reintroduced DOPA in the Senate as part of S. 49, the Protecting Children in the 21st Century Act, which remains in committee. GovTrack.us, S. 49: Protecting Children in the 21st Century Act, <http://www.govtrack.us/congress/bill.xpd?bill=s110-49> (last visited Jan. 30, 2009). Eventually, on February 16, 2007, Representative Mark Kirk (R-IL) reintroduced the Deleting Online Predators Act of 2007 and the bill was referred to the House Committee on Energy and Commerce, where it currently sits. Deleting Online Predators Act of 2007, H.R. 1120, 110th Cong. (2007); Library of Congress, Thomas.gov, <http://www.thomas.gov/cgi-bin/bdquery/z?d110:HR01120:@@L&summ2=m&> (last visited Jan. 30, 2009).

⁶³ Thierer, *supra* note 1. DOPA would also have mandated that the institutions affected by DOPA be capable of disabling the restrictions for use by adults, or minors with adult supervision, so that the websites could be viewed for educational purposes. Deleting Online Predators Act of 2006, H.R. 5319, 109th Cong. (2006).

was to protect children from online threats such as sexual predators.⁶⁴ However, many websites that allow users to create accounts and public profiles, such as Yahoo.com and Amazon.com, may have fallen within DOPA 2006's definition of "social networking" website.⁶⁵ The Federal Communications Commission would have been charged with clarification of DOPA 2006.⁶⁶ Critics of DOPA 2006 believed it would do too little to remedy the problem of predators prowling SNs because they found it "too far sweeping in character and propose[s] regulating legitimate sites and speech, to get at a small handful of bad actors."⁶⁷ Critics believed the better course of action would be to provide law-enforcement officials with better resources to hunt down sexual predators, who DOPA 2006 critics felt would only find another avenue to prey upon minors if SNs were to be heavily regulated.⁶⁸

As is apparent, Congress's previous attempts to deal with the safety of minors on the Internet have had mixed results. DOPA 2006, which, of all the legislation mentioned in this section, dealt closest with the problem of predators prowling SNs, failed to pass through Congress, although a newer version of DOPA is currently pending legislation. COPPA is more concerned with the protection of minors' private information and less with directly confronting the problem of online predators and COPA violates constitutional rights. Given the overall lack of congressional success in dealing with Internet predation, it comes as little surprise that many, such as the Attorneys General involved in the January 2008 Agreement, feel the need to take other action against predators.⁶⁹

⁶⁴ Marshall Kirkpatrick, *U.S. House: Schools Must Block MySpace, Many Other Sites*, TECHCRUNCH, July 27, 2006, <http://www.techcrunch.com/2006/07/27/us-house-resolution-targeting-myspace-web20-passes-410-15>.

⁶⁵ McCullagh, *supra* note 62.

⁶⁶ *Id.*

⁶⁷ Thierer, *supra* note 1.

⁶⁸ *Id.* ("[I]n a sense, the entire Internet is one big social networking site."); *see also* 152 Cong. Rec. H5885 (daily ed. July 26, 2006) (statement of Rep. Stupak), *available at* http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?position=all&page=H5885&dbname=2006_record.

⁶⁹ In addition to this, private actions by concerned parents against social-networking websites have met with failure. *See Doe v. MySpace, Inc.*, 474 F. Supp. 2d 843 (W.D. Tex. 2007) (holding that immunity provision under Communications Decency Act ("CDA") applied to negligence and gross negligence claims that operator knew that sexual predators were using service to communicate with minors and did not react appropriately; immunity provision under CDA applied to negligence and gross negligence claims that operator's

B. IS THE PROBLEM AS SERIOUS AS WE ARE LED TO BELIEVE?

Some argue the problem of predators prowling SNs is not as pervasive as the Attorneys General involved in the January 2008 Agreement believe. Television programs like Dateline NBC's feature *To Catch a Predator* bring the issue of Internet predators to the forefront of many discussions concerning online safety.⁷⁰ In addition to general coverage of the problem by television, there have been a number of highly-publicized cases of minors contacted, abducted, and/or abused by predators on SNs.⁷¹

Critics of governmental regulation of the Internet, such as The Progress and Freedom Foundation ("PFF"), however, argue that these instances "do not mean that a national epidemic of Internet-related child abductions is occurring."⁷² The Progress and Freedom Foundation cites a study from 2002 stating that abductions by strangers, such as Internet predators, "represent an extremely small portion of all missing children [cases]."⁷³ Moreover, psychologist Anna C. Salter, author of *Predators: Pedophiles, Rapists, and Other Sex Offenders*, reports that sex offenders often choose victims they are personally familiar with, such as the children of neighbors, friends, or family members.⁷⁴ Former FBI agent Kenneth V. Lanning, author of *Child Molesters: A Behavior Analysis*, concurs:

security measures or policies relating to age verification were ineffective; owner and operator did not have duty to institute reasonable safety measures to protect minors who used site from sexual predators; and exception to general rule under Texas law that person had no legal duty to protect another from criminal acts of third person or control conduct of another person did not apply to owners and operators).

⁷⁰ See generally MSNBC.COM, *To Catch a Predator*, <http://www.msnbc.msn.com/id/10912603> (last visited Jan. 30, 2009).

⁷¹ Adam Thierer, *Social Networking and Age Verification: Many Hard Questions; No Easy Solutions*, PROGRESS ON POINT (The Progress & Freedom Foundation), Mar. 14, 2007, at 5, available at <http://www.pff.org/issues-pubs/pops/pop14.5ageverification.pdf>.

⁷² *Id.*

⁷³ *Id.* (quoting ANDREA J. SEDLAK, DAVID FINKELHOR, HEATHER HAMMER & DANA J. SCHULTZ, NATIONAL ESTIMATE OF MISSING CHILDREN: AN OVERVIEW 7 (Office of Juvenile Justice and Delinquency Prevention Oct. 2002), available at http://www.missingkids.com/en_US/documents/nismart2_overview.pdf).

⁷⁴ ANNA C. SALTER, *PREDATORS: PEDOPHILES, RAPISTS, AND OTHER SEX OFFENDERS* 5, 76 (Basic Books 2003) ("[Sex offenders] are part of our communities, part of our network of friends, and sometimes part of our families.").

The often forgotten piece in the puzzle of the sexual victimization of children is acquaintance molestation. This seems to be the most difficult manifestation of the problem for society and the law to face. People seem more willing to accept a sinister stranger from a different location or father/stepfather from a different socioeconomic background as a child molester than a clergy member, next-door neighbor, law-enforcement officer, pediatrician, teacher, or volunteer with direct access to children. The acquaintance molester, by definition, is one of us. He is not just an external threat. We cannot easily distinguish him from us or identify him by physical traits. These kinds of molesters have always existed, but society and the criminal-justice system have been reluctant to accept the reality of these cases.⁷⁵

As the PFF sources make clear, the problem of the faceless Internet predator may be, to an extent, blown out of proportion by programs like *To Catch a Predator*.⁷⁶ In fact, at least one member of the Task Force formed by the January 2008 Agreement admits that, after some investigation, the Task Force found evidence that minors being forced into sex by online predators is “almost non-existent.”⁷⁷ One must be mindful to focus on data and facts, not succumb to

⁷⁵ KENNETH V. LANNING, NAT’L CTR. FOR MISSING & EXPLOITED CHILDREN, CHILD MOLESTERS: A BEHAVIOR ANALYSIS 5 (2001), http://www.missingkids.com/en_US/publications/NC70.pdf.

⁷⁶ For sources describing in greater detail statistics related to child abductors’ relationships to their victims, see ATTORNEY GENERAL, STATE OF OHIO, OHIO MISSING CHILDREN CLEARINGHOUSE, 2005 ANNUAL REPORT 4 (2005), http://www.ag.state.oh.us/victim/pubs/2005ann_rept_mcc.pdf (of the 11,074 documented missing child cases in 2005, only 5 involved abduction by strangers while 146 were abductions by family members); SALTER, *supra* note 74; SEDLAK ET AL., *supra* note 73, at 7; Claire Osborn, *Teen, Mom Sue MySpace.com for \$30 Million*, AUSTIN AMERICAN-STATESMAN, June 20, 2006, at G01 (case of minor being abducted by someone she contacted on a social-networking website); Yello Dyno, Abduction Statistics, http://www.yellodyno.com/html/abductions_stats.html (last visited Jan. 30, 2009); TENNESSEE VICTIMS OF CRIME STATE COORDINATING COUNCIL, CHILD ABDUCTION (2002), <http://www.tcadsv.org/Websites/vcsc/chil abduction.htm>.

⁷⁷ Larry Magid, *Verifying Age Online Doesn’t Solve All Problems*, SAFEKIDS.COM, <http://safekids.com/2008/05/06/verifying-age-online-doesnt-solve-all-problems> (last visited Jan. 30, 2009).

paranoia, when dealing with such a serious issue. This is especially true when the proposed remedies may be worse than the problem itself.

IV. ONE SOLUTION: AGE VERIFICATION

Age verification is one way to combat the problem of online predators. This process would, in theory, give SNs the ability to correctly identify and filter out minors whose parents do not want them to register on the website(s). Advocates of age verification believe it will make children safer online.⁷⁸ The FTC advocated age verification in its five-year report on COPPA.⁷⁹ According to the FTC, age verification would supplement the online protection for children that is already provided by COPPA.⁸⁰

Another advocate of further regulation to protect children is the National Center for Missing and Exploited Children ("Center"). The Center describes social-networking sites as "a perfect place for people who would harm children to identify their victims and gain their trust."⁸¹ According to the Center, this trust can lead to children accepting predators' invitations to meet in person, cyberbullying, or identity theft.⁸² The Center praised the January 2008 Agreement between MySpace and the Attorneys General as a step in the right direction to safeguard children online.⁸³ One can assume that the

⁷⁸ See generally, *GrownUpsOnline.com Adopts Blumenthal Age/ID Verification Initiative*, NEWSWIRE TODAY, Jan. 19, 2007, <http://www.newswiretoday.com/news/> (The article called MySpace the first responsible SN website under the false impression that MySpace agreed to implement age verification. MySpace only pledged to explore the option of age verification.).

⁷⁹ See FED. TRADE COMM'N, IMPLEMENTING THE CHILDREN'S ONLINE PRIVACY PROTECTION ACT: A REPORT TO CONGRESS (2007), available at http://www.ftc.gov/reports/coppa/07COPPA_Report_to_Congress.pdf.

⁸⁰ *Id.*

⁸¹ Blog Beware, The National Center for Missing and Exploited Children, http://www.missingkids.com/missingkids/servlet/PageServlet?LanguageCountry=en_US&PageId=3602 (last visited Jan. 30, 2009).

⁸² *Id.*

⁸³ Jacqui Cheng, *Harvard, MySpace Spearhead Internet Safety Task Force*, ARS TECHNICA, Feb. 28, 2008, <http://arstechnica.com/news.ars/post/20080228-harvard-myspace-spearhead-internet-safety-task-force.html>.

Center would be even more pleased if MySpace follows through on its promise to explore the possibility of age verification.

However, critics of age verification say it has many flaws that will keep it from properly remedying the problem of Internet predators. One of the criticisms put forth against age verification is that it tends to work best in cases where adults need to be identified as adults, but is less effective in identifying children who portray themselves as adults.⁸⁴ Providing proof of one's status as an adult is easy— one must simply provide one's driver's license, credit card, Social Security number, or some combination thereof.⁸⁵ The problem arises when minors are able to falsely verify online that they are eighteen or over.⁸⁶ It is easy for a minor to pose as an adult by using an adult's driver's license or credit card information, information that one imagines is readily available to many minors.⁸⁷ In addition, it may be possible for predators to register as adults and set up accounts for their fictitious children, allowing them access to minors' profiles.⁸⁸

There are still other issues about the validity of online age verification. For example, verified identities could be bought and sold

⁸⁴ Jacqui Cheng, *Why Age Verification Won't Cure What Ails Social Networking Sites*, ARS TECHNICA, May 15, 2007, <http://arstechnica.com/news.ars/post/20070515-why-age-verification-wont-cure-what-ails-social-networking-sites.html>.

⁸⁵ *Id.* See also The Progress & Freedom Foundation, Panel Discussion: Age Verification for Social Networking Sites: Is it Possible? Is it Desirable? 14 (Mar. 23, 2007), *available at* <http://www.pff.org/issues-pubs/pops/pop14.8ageverificationtranscript.pdf> [hereinafter Panel Discussion].

⁸⁶ John Cardillo, founder and CEO of Sentinel Tech Holding Corporation (a leader in online identity and background verification space), has mentioned how easy it is for anyone to verify that they are over eighteen. Sentinel recently introduced Sentinel Safe, which is a sex offender detection tool; Sentinel Safe's first partner was MySpace.com. Panel Discussion, *supra* note 85, at 3, 5–6.

⁸⁷ Cheng, *supra* note 84; Greenberg, *supra* note 18 (asserting that more stringent systems of identification involving social security numbers could endanger user anonymity). It is also difficult, if not impossible, to verify that a child online is in fact a child for the purposes of creating a child-only site or keeping adults and children separate. John Cardillo was able to use Imbee.com, a supposedly minor-friendly and safe SN, to get four adults' names by using fake birth dates, fake addresses, and one of four different credit cards. His experiment not only worked in that Imbee.com accepted the "minors" applications, but also sent him what Cardillo called a "pedophile passport"— an identity 2.0 virtual credential to a person that did not exist who supposedly lived at Cardillo's apartment. Panel Discussion, *supra* note 85, at 6.

⁸⁸ Tim Lee, *TPW 22: The Pitfalls of Age Verification*, THE TECH. LIBERATION FRONT, July 27, 2007, <http://techliberation.com/2007/07/27/tpw-22-the-pitfalls-of-age-verification>.

online, creating a “black market” for minor “identities.”⁸⁹ In addition, those who do not want to submit to age verification may simply begin using internationally-based SNs, which are not subject to age verification.⁹⁰ Even easier, minors may simply circumvent age verification by using an anonymous e-mail account or a different computer to access a social networking account.⁹¹

Yet another criticism is that age verification is *not* a background check; critics contend that the use of the word “verification” can lull some parents into a false sense of security by making them think that some form of background check has been utilized.⁹² Age verification could lead some people to assume that verified users underwent “some type of vetting” in order to get verification.⁹³ The lack of follow-ups and subsequent validations makes this threat even larger, according to age verification critics.⁹⁴ These critics argue it would be dangerous for parents to assume that just because someone their child encounters online has been “age verified,” that person has undergone some form of criminal background check as well.⁹⁵

Critics of age verification on SNs, like Adam Thierer, believe the success seen when age verification is used on non-SN websites may not actually translate well to sites like MySpace and Facebook.⁹⁶ Thierer cites online dating websites as an example.⁹⁷ Age verification works on these websites, according to Thierer, because “in most cases

⁸⁹ Greenberg, *supra* note 18.

⁹⁰ *Id.*

⁹¹ Donna Howell, *MySpace, States Propose to Protect Youths Online*, INVESTOR'S BUS. DAILY, Jan. 14, 2008, available at <http://www.bookrags.com/news/myspace-states-propose-principles-to-moc/>.

⁹² Thierer, *supra* note 71, at 14.

⁹³ *Id.* (quoting e-mail from John J. Cardillo, President, Sentinel Tech Holding Corp., to Adam Thierer, Senior Fellow, The Progress & Freedom Foundation (Mar. 11, 2007) (on file with John J. Cardillo)) (Cardillo notes that “in the case of convicted sex offenders, age verification actually helps them by giving them an additional layer of legitimacy.”).

⁹⁴ *Id.* at 20.

⁹⁵ Thierer, *supra* note 20.

⁹⁶ Thierer, *supra* note 71, at 14.

⁹⁷ *Id.*

... *the users want to be verified.*"⁹⁸ Age verification in adult dating websites works to help the user join a community where trust is essential and age verification increases the "marketability" of the user.⁹⁹ It works because "user compliance is driven by market forces, not regulation."¹⁰⁰ Thierer believes such reasoning does not apply to minors accessing SNs because minors inherently resist being age-verified before being allowed to access websites.¹⁰¹

Finally, researchers at the University of New Hampshire have pointed out that in 95% of cases where a minor¹⁰² was assaulted by someone they met online, the minor was cognizant they were speaking to an adult.¹⁰³ Moreover, the *Journal of Adolescent Health* reported in 2004 that in 80% of cases, the minor was aware of the adult's sexual intentions through the mention of sexual topics online, and the minor voluntarily went somewhere with the adult 83% of the time.¹⁰⁴ Given these startling statistics, one must pause to wonder if age verification could remedy the problem of sexual predators given that apparently most minors who actively engage predators do so knowing they are dealing with an adult and knowing what that adult's intentions are. These statistics substantiate the notion that minors may attempt to circumvent age verification technology. While inaction is not a solution to the problem, providing a false sense of security may be even worse.¹⁰⁵

⁹⁸ *Id.* (emphasis in original).

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.* (noting that one way for minors to circumvent age verification would be for children to "share their online credentials or passwords with friends").

¹⁰² The University of New Hampshire research focused on thirteen to fifteen year-old girls. Panel Discussion, *supra* note 85, at 10–11.

¹⁰³ *Id.*

¹⁰⁴ Janis Wolak, David Finkelhor & Kimberly Mitchell, *Internet-Initiated Sex Crimes Against Minors: Implications for Prevention Based on Findings From a National Study*, 35 J. OF ADOLESCENT HEALTH, 424.e11, 424.e16 (2004).

¹⁰⁵ Thierer, *supra* note 71, at 16–17. Jeff Schmidt, CEO of authentication company Authis, stated that no one advocates "leaving doors unlocked," but that we have to make sure our result is not worse than doing nothing in the first place. He further stated with "one hundred percent certainty" that there will be age-verified "bad guys" if age verification is the only measure used to combat the problem. Cheng, *supra* note 84.

Age verification also implicates privacy concerns. One age verification skeptic worries about the possible collection of personal information in a large, possibly breachable, database.¹⁰⁶ The collection of sensitive, identifying, and personal information needed to construct such a database has concerned privacy experts for years.¹⁰⁷ Most disconcerting to critics of age verification is that the information collected would relate to *minors*, not adults, and the United States has a history of data breaches that allow hackers and thieves access to sensitive information.¹⁰⁸ Hackers could use minors' information in harmful ways, such as taking advantage of their favorable credit records.¹⁰⁹ A collection of information of the size and sort necessary for age verification to be successful raises significant privacy issues.

Critics give persuasive arguments that age verification will not stop the problem of online predation. They also cite evidence that, most of the time, minors know they are talking to an adult and know of the adult's possible lecherous intentions. Age verification seems to be a solution with many holes.¹¹⁰ But is there a better solution? Are we even looking at the right problem?

V. ANOTHER SOLUTION: PARENTAL INVOLVEMENT AND PRIVATE REGULATION

An alternative solution to age verification is to cultivate the existing self-regulation of SNs and emphasize parental education about SNs and the online world in general. There is ample data indicating minors have a much greater understanding of the online

¹⁰⁶ Harris, *supra* note 27.

¹⁰⁷ Thierer, *supra* note 20. According to Thierer, mandatory age verification "represents an effort to make online anonymity a crime." *Id.*

¹⁰⁸ Anne Collier, *Social Networkers' Age Verification*, CONNECTSAFELY, Oct. 26, 2007, <http://www.connectsafely.org/articles--advice/commentaries---staff/social-networkers-age-verification.html>.

¹⁰⁹ *Id.*

¹¹⁰ See Thierer, *supra* note 1 ("Consider an analogy from the old, offline world. Shopping malls are a sort of social networking site. And, unfortunately, there have been cases of children being abducted in or near malls in the past. But no one has ever seriously proposed solving the problem by shutting down all shopping malls or even restricting children's access to them. That would be an illogical response and, more important, it would not solve the problem.").

world than do their parents.¹¹¹ Many experts believe parental misinformation is the real problem at the core of the SN predation debate.¹¹² Because age verification may never be 100% reliable, at least one age verification technology vendor advocates heightened parental education and control.¹¹³ This idea is reminiscent of the arguments, *supra* Part III.B, that the problem of sexual predators is not as widespread as some would have us believe; heightened parental online education may cause many parents to realize the problem of predators is not as widespread as many believe. Parents should be properly educated about the data concerning sexual predator use of SNs¹¹⁴ and the possible flaws of age verification systems.

Minors are going to use the Internet. Parents need to accept the fact that their children will be exposed to the Internet and its many possible perils either through school, friends, or any other number of means. Children of today are growing up online and express themselves more openly than past generations.¹¹⁵ Instead of trying to hide their children from the Internet, parents would be well-advised to learn more about the Internet themselves and become better able to educate their children about proper online safety habits.¹¹⁶ Parents' increased understanding of the Internet will help to keep children safe online.

There are a variety of ways educated parents can keep their children safe online. Parents can "use filters to block dangerous sites on home computers, and can also be proactive about advising kids on

¹¹¹ Katherine Demopoulos, *Parents Ignorant of Children's Internet Use, Report Reveals*, THE GUARDIAN, July 17, 2006, <http://www.guardian.co.uk/society/2006/jul/17/childrensservices.elearning>.

¹¹² Thierer points out that one of the driving forces behind the push to regulate SNs is that "many adults simply don't understand this new technology and have created a sort of 'moral panic' around it." Thierer, *supra* note 71, at 6. He also describes SNs as the burger hop or mall of the current generation, a place where young people go to socialize. *Id.*

¹¹³ *MySpace Age Verification Agreement Meaningless, Says CYBERSitter CEO*, REUTERS, Jan. 16, 2008, <http://www.reuters.com/article/pressRelease/idUS210157+16-Jan-2008+BW20080116>.

¹¹⁴ See *supra* Part III.B (relating the idea that it is more likely for people within a child's physical social circles to sexually assault them than it is for a stranger online to be able to engage in such action).

¹¹⁵ Emily Nussbaum, *Say Everything*, N.Y. MAGAZINE, Feb. 12, 2007, <http://nymag.com/news/features/27341>.

¹¹⁶ Thierer, *supra* note 71, at 28.

the dangers of such sites.”¹¹⁷ Internet-educated parents can also teach their children about the risks inherent online. These parents can teach their children about the dangers of revealing personal information online and set guidelines to which the children should adhere.¹¹⁸ Parents can also teach children to inform them whenever someone’s activity online makes the child feel uncomfortable, and an online-savvy parent will keep a record of their child’s online activities.¹¹⁹ These are just a few examples of how educated parents can help keep their children safe.

There are many websites that exist to further Internet safety education. These include Getnetwise.org,¹²⁰ the iKeepSafe Internet Safety Coalition,¹²¹ NetSmartz Workshop,¹²² Project Online Safety,¹²³ StaySafe.org,¹²⁴ i-SAFE Inc.,¹²⁵ WebWiseKids,¹²⁶ and Wired Safety,¹²⁷ just to name a few. If parents were to consult just some of these websites, they would be better situated to educate their children to safely navigate the Internet. These websites offer parents a more realistic perspective of the issues without inflating the pitfalls that are associated with age verification, such as exposing minors’ personal information or reinforcing a parental false sense of security.¹²⁸

¹¹⁷ Anita Ramasastry, *A Fourteen-Year-Old Girl’s Suit Against MySpace*, FINDLAW, http://technology.findlaw.com/resources/scripts/prINTER_friendly.pl?page=/articles/00006/010163.html (last visited Mar. 10, 2009).

¹¹⁸ GetNetWise, Online Safety Guide, <http://kids.getnetwise.org/safetyguide> (last visited Jan. 30, 2009).

¹¹⁹ Use Your NetSmartz Frequently Asked Questions, <http://www.netsmartz.org/uyn/uynfaq.htm> (last visited Jan. 30, 2009).

¹²⁰ www.getnetwise.org (last visited Jan. 30, 2009).

¹²¹ www.iKeepSafe.org (last visited Jan. 30, 2009).

¹²² www.NetSmartz.org (last visited Jan. 30, 2009).

¹²³ www.projectonlinesafety.com (last visited Jan. 30, 2009).

¹²⁴ www.staysafe.org (last visited Jan. 30, 2009).

¹²⁵ www.iSafe.org (last visited Jan. 30, 2009).

¹²⁶ www.wiredwithwisdom.org (last visited Jan. 30, 2009).

¹²⁷ www.wiredsafety.org (last visited Jan. 30, 2009).

¹²⁸ *See supra* Part IV.

Adam Thierer notes that industry self-regulation of SNs will have to be part of the solution dealing with online predation.¹²⁹ Assuming age verification was not implemented by the self-regulation, SNs could become safer for minors and avoid many of the privacy concerns of age verification. Many social-networking websites have taken steps to remedy the predator problem, such as adopting formal policies to report abusive or offensive behavior, tagging inappropriate or offensive content, and then, if necessary, removing the offender or notifying the authorities.¹³⁰ SNs have a huge incentive to self-regulate; users are likely to be naturally drawn to websites that have a better reputation for privacy protection and predator prevention.¹³¹

SNs already self-regulate because they have real interests in ensuring the safety of their clientele. For example, "MySpace already dedicates one-third of its staff to policing the site for problematic behavior, and it recently [2006] hired a former Department of Justice official to oversee online safety issues."¹³² Other websites have also taken steps to ensure the safety of minor users.¹³³ Facebook recently agreed to "develop age-verification technology and send warning messages when someone under the age of eighteen is communicating with an unknown adult."¹³⁴ The site will also restrict users from changing their age.¹³⁵ SNs have good reasons to be concerned about the product they provide to their clientele. Self-policing policies keep advertisers and users happy. It is easily understandable that SNs will

¹²⁹ Thierer, *supra* note 1.

¹³⁰ Thierer, *supra* note 71, at 11.

¹³¹ *Id.* (noting that many social networking sites depend on advertising revenue and these sites risk losing advertisers if they fail to maintain a positive standing). See also Sarah D. Scalet, *Hemanshu Nigam: Mr. Safety for MySpace*, CSO MAG., Mar. 1, 2007, http://www.csoonline.com/read/030107/fea_myspace.html (discussing how important it is to advertisers that the website not be laden with pedophiles and predators).

¹³² Thierer, *supra* note 1.

¹³³ See generally Posting of Timothy P. Tobin to the Privacy Law Blog, <http://privacylaw.proskauer.com/2007/10/articles/online-privacy/new-york-attorney-general-settlement-with-facebook-creates-new-model-to-protect-children-online> (Oct. 17, 2007, 15:36 EST).

¹³⁴ *Social-Networking Sites Work to Become Safer*, I-PARENT TIMES (i-Safe, Inc., Carlsbad, Cal.), May/June 2008, at 2, available at <http://www.isafe.org/imgs/pdf/newsletter/2008/i-Parent-0506-08.pdf>.

¹³⁵ *Id.*

work to sufficiently self-police themselves in order to combat the threat of predators.

If SNs are allowed to continue to exist via self-regulation, their many beneficial uses will continue as well. Parents and critics of MySpace should be aware of the good that MySpace and other SNs can do. For example, the National Suicide Prevention Lifeline works with MySpace in efforts to reach troubled users that are contemplating suicide.¹³⁶ This is just one of the valuable services MySpace offers its users, and given the explosion of users on SNs, it is easy to perceive how much good can come of SNs partnering with organizations like the National Suicide Prevention Lifeline. Self-regulation would allow SNs to continue this and other beneficial functions without facing the adverse consequences of public regulation discussed, *supra* Part IV.

VI. CONCLUSION

The January 2008 Agreement between MySpace and the Attorneys General has broad implications for the future of SN regulation. The Agreement's mandate that MySpace investigate the possibilities of age verification marked a victory for age verification advocates. Advocates believe age verification will help make children who explore the online world safer from the threat of predation by making it more difficult for predators to contact minors via the Internet.

However, the flaws of age verification are readily noted by critics. There is a danger that these flaws would create a sort of "black market" for overseas websites to offer products to minors without age verification, provide a false sense of security for parents, and not keep determined minors off of these websites, as minors could just use services like web-based e-mails to gain access to SNs equipped with age verification. According to many critics, advocates of age verification are rallying behind a false hope that this technique will make SNs safer for minors; in fact, data suggest proponents' fears of online predation are not as great as many believe. The better tactic to use in fighting predators is to follow the advice of experts and increase parent and child Internet education while fostering self-regulation among the websites themselves.

¹³⁶ National Suicide Prevention Lifeline, <http://www.suicidepreventionlifeline.org> (last visited Jan. 30, 2009).